

DOCUMENT RESUME

03302 - [A2313440]

[Untimely Protest to Procurement Specifications]. B-189687.
August 16, 1977. 2 pp.

Decision re: Carrier Corp.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel; Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: National Aeronautics and Space
Administration: George C. Marshall Space Flight Center,
Huntsville, AL.

Authority: 4 C.F.R. 20.2(a). B-182921 (1975).

Protester to the award of a contract by the National Aeronautics and Space Administration stated that specifications were "slanted" to favor a particular type of equipment and that procurement should have been formally advertised. The protest was untimely since it was not filed with GAO within 10 days of receipt of notice of initial adverse action by agency and was first filed after closing date for receipt of proposals.

3440

03302

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Bergen
Prize II

FILE: B-189687

DATE: August 16, 1977

MATTER OF: Carrier Corporation

DIGEST:

Where protest is filed initially with procuring agency, subsequent protest to GAO not filed within 10 days of protester's receipt of actual or constructive notice of initial adverse action by agency is untimely; similarly, protest of use of negotiation rather than formal advertising first filed after closing date for receipt of proposals is also untimely and not for consideration under GAO Bid Protest Procedures.

Carrier Corporation (Carrier) protests the award of a contract by the George C. Marshall Space Flight Center, National Aeronautics and Space Administration (NASA), under request for proposals (RFP) No. 8-4-7-11-71614-01. Carrier protests that the specifications were "slanted" to favor a particular type of equipment and that the procurement should have been formally advertised.

Carrier originally protested to NASA certain aspects of the specifications. NASA responded by amending the specification. By letter dated May 25, 1977, Carrier informed NASA that the amendment did not resolve its protest. Nonetheless, on June 3, 1977, Carrier submitted a proposal to NASA, noting therein that it still felt the specifications were improper. On July 7, 1977, NASA mailed to Carrier notice that award had been made to another contractor. On July 22, 1977, Carrier protested to this Office.

We believe the protest is untimely. Our Bid Protest Procedures, at 4 C.F.R. § 20.2(a), require that matters protested initially to the procuring agency be protested to this Office within 10 days of the protester's receiving actual or constructive notice of the agency's "initial adverse * * * action" on the protest. Here, NASA's going ahead with receiving and evaluating proposals, despite the pendency of Carrier's protest regarding the specifications, constituted that initial adverse action. Norris Industries, B-182921, July 11, 1975, 75-2 CPD 31 and cases cited therein. Accordingly, Carrier's failure to protest to this Office within 10 days of the closing date for receipt of proposals renders its protest on the specifications untimely.


B-189687

With regard to the agency's use of negotiation in lieu of formal advertising, section 20.2(b)(1) of our Bid Protest Procedures states:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.

Thus, Carrier should have protested this issue prior to the closing date for receipt of proposals. Since it first protested the use of negotiation on July 22, 1977, its protest on this issue is untimely also.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel